

**IN THE CIRCUIT COURT OF CAPE GIRARDEAU COUNTY  
STATE OF MISSOURI**

STATE OF MISSOURI ex rel. JEREMIAH W. )	)	
(JAY) NIXON, Attorney General of the State )	)	
of Missouri, and the MISSOURI DEPARTMENT )	)	
OF NATURAL RESOURCES )	)	
	)	
Plaintiff, )	)	
	)	
v. )	)	Case No. CV600-596CC
	)	
DAVID BARKLAGE and TARGET MEDIA )	)	
CONSULTANTS, INC. )	)	
Defendants. )	)	

**CONSENT JUDGMENT**

This action was commenced by the State of Missouri at the relation of Jeremiah W. (Jay) Nixon, Attorney General of Missouri, and the Missouri Department of Natural Resources, alleging public nuisance and violations of Missouri's Underground Storage Tank Law, Chapter 319, RSMo., the Clean Water Law, Chapter 644, RSMo., and their implementing regulations. David Barklage and Target Media Consultants, Inc., (the "Defendants"), and the State of Missouri, by and through their attorneys, have agreed to the entry of this Judgment. The stipulated facts contained herein shall be findings of fact by this Court and the conclusions herein shall be conclusions of law by this Court.

**I. Findings of Fact and Conclusions of Law**

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General for the State of Missouri who is authorized to institute, in the name and on behalf of the state, all civil proceedings at law or in equity necessary to protect the rights and

interests of the state, under § 27.060, RSMo.

2. The Missouri Department of Natural Resources ("Department") is a state agency created under § 640.010, RSMo., and is authorized to administer the provisions of the Missouri Petroleum Storage Tank Law, Chapter 319, RSMo., and its implementing regulations. (The Underground and Petroleum Storage Tank Law replaced the Underground Storage Tank Law when it was enacted on August 28, 1996. Unless otherwise noted, both pre- and post-August 28, 1996, forms of §§ 319.100-319.139, RSMo., and its regulations, are referred to herein as the "UST Law"). The Department is authorized to assist the Missouri Clean Water Commission in interpreting and enforcing the Missouri Clean Water Law, Chapter 644, RSMo., and its regulations (collectively, the "Clean Water Law").

3. At all relevant times, two "underground storage tanks" for storing "petroleum" -- as those terms are defined in § 319.100, RSMo. -- have existed at the "Spanky's Texaco" at 2201 Broadway, Cape Girardeau, Cape Girardeau County, Missouri (the "site"). The above referenced underground storage tanks ("USTs") are identified collectively by the Department as ST 201.

4. At all relevant times, David Barklage ("Barklage") was lawfully responsible for assuring the regulatory compliance of the USTs at the site.

5. The Defendants were aware that the USTs did not comply with several provisions of the UST Law but did not timely correct those violations by obtaining

financial responsibility for the USTs and, either taking the USTs out of service or performing the necessary mechanical upgrades, testing and record keeping.

6. At all relevant times, the Defendants were "operators" of the USTs at the site - as that term is defined in § 319.100, RSMo.

7. At all relevant times, Target Media Consultants, Inc., ("Target"), a Missouri corporation, has been an "owner" of the USTs at the site - as that term is defined in § 319.100, RSMo.

8. Groundwater beneath the surface of the site, constitutes "waters of the State" within the meaning of § 644.016(17), RSMo.

9. Refined petroleum products, including gasoline, constitute "pollution" and "water contaminants" within the meaning of § 644.016(9) & (14), RSMo.

10. The leaking USTs at the site constitute a "point source" and a "water contaminant source" within the meaning of § 644.016(8) & (15), RSMo.

11. At all relevant times, Barklage has been the sole corporate officer for Target.

12. Venue is proper herein pursuant to § 319.127.1 and § 644.076.1, RSMo., because the violations of the UST Law and the Clean Water Law, and the property, are located in Cape Girardeau County.

13. On or about June 29, 1998, the Department inspected the site and documented several violations of the USTs.

14. On July 9, 1998, the Department issued to the Defendants a Notice of Violation ("NOV") #17285SE, together with a cover letter and Inspection Report. True and accurate copies of NOV #17285SE, and its cover letter and Inspection Report, are attached hereto as Exhibit 1, and are incorporated herein by this reference.

15. On December 4, 1998, the Department re-inspected the site and found that the Defendants had not corrected the violations noted in NOV #17285SE. During this inspection, the Department provided technical documents and copies of pertinent regulations to the Defendants to assist them in correcting their violations.

16. On or about December 16 - 18, 1998, a "release" of more than three thousand gallons of petroleum - as that term is defined by § 319.100, RSMo., - occurred from the USTs (the "December 1998 release").

17. The December 1998 release constituted an unpermitted discharge of pollution and water contaminants into waters of the State of Missouri in violation of the Clean Water Law.

18. On or about December 16, 1998, the Cape Girardeau City Fire Department (the "Fire Department") responded to complaints of a strong petroleum odor in the sewer adjacent to the site and flushed water down the sewer to dilute the petroleum and reduce the possibility of an explosion.

19. In its response to the December 1998 release, the Fire Department determined that petroleum vapors at the site reached 100% of the Lower Explosive Limit

("LEL").

20. On or about December 18, 1998, upon notification by the Fire Department, the Department responded to and inspected the site.

21. During its initial response to the December 1998 release, the Department confirmed that a substantial amount of petroleum had been released from the Defendants' USTs and that some of it had entered the municipal sewer. The Department met Barklage at the site and declared a "hazardous substance emergency", as defined by § 260.500, RSMo.

22. At the Department's request, the Defendants engaged the services of environmental contractors to address the release. Those contractors performed several repairs to the USTs and removed and properly disposed of a considerable amount of liquid petroleum and petroleum-contaminated material which had resulted from the December 1998 release.

23. On or about January 27, 1999, the Department inspected the site and documented several violations of the USTs.

24. As a result of its January 27, 1999 inspection, the Department issued to the Defendants, NOV #17480SE, with a certified cover letter, Inspection Report and UST Compliance Inspection Checklist. In those documents, the Department detailed the violations found during this inspection and ordered the Defendants to take appropriate corrective action, or propose a schedule for corrective action, within 15 days. True and

accurate copies of those documents are attached hereto as Exhibit 2 and are incorporated herein by this reference.

25. Although the Defendants hired environmental contractors to address some or all of the conditions which constituted the violations in NOV #17480SE, those violations were not adequately remedied.

26. On or about December 2, 1999, the Department inspected the site and documented several violations of the USTs.

27. During the December 2, 1999 inspection, the Department observed that the Defendants had deposited petroleum-contaminated soil from the December 1998 release on-site, and had failed to cover it.

28. During the December 2, 1999 inspection, the Department found water in the USTs and liquid petroleum in two on-site monitoring wells -- indicating a continuing release from one or more of the USTs.

29. On or about December 23, 1999, the Department issued to the Defendants, NOV #17864SE, a cover letter and an Inspection Report detailing their violations observed during the December 2, 1999 inspection. True and accurate copies of NOV #17864SE, the Inspection Report and the cover letter are attached hereto as Exhibit 3 and are incorporated herein by this reference.

30. This Court finds that the facts set forth in the attached Exhibit 1, Exhibit 2 and Exhibit 3 exist, or existed, and concludes that they constitute those violations of law

by defendants Barklage and Target as identified therein.

31. This Court further finds that violations of the UST Law and Clean Water Law continued at the site after the date the Petition was filed.

32. At no time prior to July 25, 2001, did the Defendants provide financial responsibility for the USTs, in violation of § 319.127, RSMo., and 10 CSR 20-11.091(1)A-B.

33. Section 319.127, RSMo., authorizes a penalty of up to \$10,000 per day, per violation of the UST Law.

34. Section 644.076, RSMo., authorizes a penalty of up to \$10,000 per day, per violation of the Clean Water Law.

35. The released petroleum, and the continuing contamination originating from the USTs at the site, constitute a public nuisance.

36. Injunctive relief is necessary to abate the public nuisance, to remedy past violations of the UST Law and Clean Water Law, and to prevent future violations.

## **II. APPLICABILITY**

37. This Judgment applies to and is binding upon the Department, the Defendants, and their successors, assigns, agents, subsidiaries, affiliates and lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the parties hereto.

## **III. COVERED MATTERS**

38. This Judgment covers matters alleged in Plaintiff's Petition for Preliminary and Permanent Injunction, Civil Penalties and Abatement of Nuisance. This Judgment does not cover claims which might derive from either of the Defendants' failure to comply with this Judgment or their liability for past and/or future violations not referenced in the Petition herein.

#### **IV. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

39. This Judgment in no way affects the responsibility of the Defendants to comply with any federal, state or local statutes, ordinances or regulations not referenced herein.

#### **V. FINAL DECREE**

40. This Court finds that it has jurisdiction over the parties and the subject matter and that the parties have waived appearance and, having considered the Plaintiff's Petition and being fully advised in the premises, finds the following relief appropriate:

#### **IT IS HEREBY ORDERED AND ADJUDGED:**

41. The effective date of this Judgment shall be the date upon which the Judgment is signed by the Court.

42. The Court shall retain jurisdiction over this matter to ensure full compliance with its provisions.

43. The Defendants shall be jointly and severally liable for the relief herein.



44. The Defendants are enjoined immediately, and at all times in the future, to comply with the Clean Water Law, the UST Law, and sections 260.500 through 260.550, RSMo., (the "Spill Bill").

45. The Defendants shall fully remediate the petroleum contamination at the site, in accordance with applicable laws, regulations and MDNR guidelines, and extend such remediation beyond the property boundaries of the site if warranted by the existence of such contamination in excess of levels established by the Department.

46. Within 30 days of this Judgment, the Defendants shall submit to the Department a report summarizing their free product removal efforts since the December 1998 release.

47. Within 20 days of this Judgment, the Defendants shall conduct free product removal, as required by the UST Law and, specifically, 10 CSR 20-10.064.

48. Within 60 days of this Judgment, or of the Department's response to the defendants' March 8, 2001 Work Plan, whichever is later, the Defendants shall fully assess and characterize the contamination originating from the site -- including both soil and groundwater impacts -- and submit to the Department for its approval a **Site Characterization Report** ("SCR") as described by the Department's Underground Storage Tank Site Characterization Guidance Document ("SC Guidance Document"). The SCR shall accurately describe the full extent of the contamination -- showing the complete lateral and vertical extent of that contamination. The Defendants shall

adequately respond to any concerns raised by the Department and, if necessary, perform further characterization and resubmit a modified SCR.

49. Within 30 days of the Department's written approval of the SCR, the Defendants shall submit a **Corrective Action Work Plan** ("CAWP") to the Department which describes the Defendants' plans to remediate the contamination and which complies with the UST Law, specifically 10 CSR 20-10.066 through 10 CSR 20-10.068, and the Department's Underground Storage Tank Corrective Action Guidance Document ("CA Guidance Document"). The Defendants shall adequately respond to any concerns raised by the Department and, if necessary, modify and resubmit the CAWP.

50. Within 15 days of the Department's written approval of the CAWP, the Defendants shall commence implementation of the CAWP and shall diligently perform the actions set forth therein until the contamination originating from the site has been fully remediated.

51. If, during implementation of the CAWP, either of the Defendants believe a substantial modification to the CAWP is necessary, then they shall obtain the prior written approval of the Department before implementing such modification.

52. Between 15 and 30 days prior to their anticipated date of completion of activity under the CAWP, the Defendants shall provide written notice to the Department of such date.

53. Within 30 days of remediation of the contamination and completion of

activity under the CAWP, the Defendants shall submit to the Department a **Corrective Action Report** as defined by the CA Guidance Document.

54. For their violations of the UST Law and the Clean Water Law, the Defendants shall pay a civil penalty of \$37,000.00 in the following manner:

a. The Defendants' payment of \$17,000.00 of this penalty shall be suspended on the condition that neither of the Defendants violate any provision of this Judgment or of the UST Law or Clean Water Law;

b. The Defendants shall pay \$20,000.00 of this amount by delivering \$5,000.00 to Plaintiff at the time they execute this Judgment, then, no later than six months, twelve months and eighteen months following their execution of this Judgment, they shall deliver three additional \$5,000.00 payments to the Plaintiff, together with 9% annual interest accruing on the unpaid amount from the date of their execution of this Judgment. (e.g., After paying \$5,000 at the time of executing this Judgment, and in the absence of any violation of any provision hereof, \$5,675 would be due six months later, \$5,450 would be due at twelve months, and \$5,225 would be due after eighteen months.);

c. If either of the Defendants violate any provision of this Judgment, then the entire unpaid balance of the \$37,000.00 penalty, with 9% annual interest, shall immediately become due and owing and they shall deliver such payment to Plaintiff within 30 days of demand therefor by the Attorney General's Office. Such demand will be effective three days after the Attorney General places written demand, postage paid, in

the U.S. Mail addressed to: Mr. David A. Taylor, David A. Taylor, P.C., P.O. Box 2228, 214 Cherry Street, Jefferson City, Missouri 65102-2228; or on the business day it is delivered to such address by other courier.

d. Every penalty payment under this Judgment shall be in the form of a certified or bank check made payable to the "Cape Girardeau County Treasurer as Trustee for the Cape Girardeau County School Fund", and shall be delivered, on or before the day it is due, to:

Mr. Barry A. Gilbert  
Assistant Attorney General  
P.O. Box 899  
Broadway State Office Building, 8th Floor  
Jefferson City, MO 65102-0899.

55. On or before the date this Judgment is entered, the Defendants shall pay \$1,727.00 for the Department's expenditures related to its emergency response to the December 1998 release. Such payment shall be made to the order of the "Missouri Department of Natural Resources" and delivered to Assistant Attorney General, Barry A. Gilbert, at the address set forth above.

56. At no time in the future shall either of the Defendants have any financial interest in, or operational control over, any underground storage tanks or any business engaged in petroleum marketing or production, in Missouri. This prohibition shall not apply to those actions required by this Judgment.

57. Time is of the essence regarding all provisions herein and any deviation

therefrom shall be a material breach of this Judgment.

58. Each party shall bear their own costs in this matter.

SO AGREED:

DAVID W. BARKLAGE

\_\_\_\_\_  
Individually and as President for  
Target Media Consultants, Inc.

DATE: \_\_\_\_\_

DAVID A. TAYLOR, P.C.  
(approved as to form)

By: \_\_\_\_\_  
David A. Taylor

DATE: \_\_\_\_\_

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: \_\_\_\_\_  
John A. Young, Director  
Air and Land Resources Division

DATE: \_\_\_\_\_

JEREMIAH W. ("JAY") NIXON  
Attorney General

By:\_\_\_\_\_

Barry A. Gilbert

Assistant Attorney General

DATE:\_\_\_\_\_

SO ORDERED:

\_\_\_\_\_  
JUDGE CARL GUM, JR.

DATE:\_\_\_\_\_